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OFFICE OF PETITIONS

In re Application of	:	
Svendsen et al.	:	DECISION ON APPLICATION
Application No. 10/807096	:	FOR
Filed: 03/22/2004	:	PATENT TERM ADJUSTMENT
Attorney Docket No. 10321.200-US	:	

This is a decision on the “APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b),” filed July 16, 2009. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from five hundred one (501) days to five hundred nine (509) days.

The application for patent term adjustment is **DISMISSED**.

On December 16, 2008, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 501 days. On July 16, 2009, applicants timely¹ submitted an application for patent term adjustment (with required fee), asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is 509 days.

Applicants request reconsideration on the basis that the restriction requirement sent on October 12, 2006, was rescinded in a non-final Office action mailed on October 20, 2006, thereby extending the PTO delay an additional eight (8) days beyond the 14 months provided by 35 U.S.C. 154(b)(1)(A)(i)(I). Applicants maintain that the non-final Office action mailed October 20, 2006 should be used in ascertaining examination delay under 35 U.S.C. 154(b)(1)(A).

¹ PALM records indicate that the Issue Fee payment was also received on July 16, 2007.

Applicants' argument is not persuasive. On October 12, 2006, the Office issued an action as a result of the examination conducted pursuant to 35 U.S.C. 131. The subsequent action in this case does not negate the fact that a first Office action was mailed on October 12, 2006. Accordingly, the period of examination delay was properly calculated based on the October 12, 2006 date.

In view thereof, the determination of patent term adjustment at the time of the mailing of the Notice of Allowance of five hundred one (501) days is correct.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Office of Data Management for issuance of a patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this matter should be directed to Attorney Derek Woods at (571) 272-3232.



Anthony Knight
Director
Office of Petitions